

## SENATE SUBSTITUTE TO HB 367

**AS PASSED SENATE****A BILL TO BE ENTITLED****AN ACT**

To amend Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance generally, so as to define certain terms; to provide for health insurance coverage for nonformulary drug products and nonpreferred drug products for a limited supply under certain conditions; to provide for statutory construction; to provide for enforcement by the Commissioner of Insurance; to provide for monetary penalties for violations; to specify that a private cause of action is not created; to amend Article 5 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to prescription drugs, so as to provide for refills; to amend Article 5 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to prescription drugs, so as to prohibit the substitution of certain drugs; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance generally, is amended by inserting a new Code section to read as follows:

"33-24-59.13.

(a) As used in this Code section, the term:

(1) 'Health benefit plan' means any individual or group plan, policy, or contract for health care services issued, delivered, issued for delivery, or renewed in this state by a health benefit plan provider, including, but not limited to, those policies, plans, or contracts executed by the State of Georgia on behalf of state employees under Article 1 of Chapter 18 of Title 45.

(2) 'Health benefit plan provider' means an insurance company, carrier, or similar third-party payor plan.

(b) Every health benefit plan that is delivered, issued, executed, or renewed in this state or approved for issuance or renewal in this state by the Commissioner on or after July 1, 2008, which provides coverage for prescription drugs shall ensure that if a physician

prescribes a drug product that is not on the health benefit plan provider's formulary or preferred drug list for the patient's health benefit plan, a pharmacist may dispense such prescribed drug product and the health benefit plan provider shall cover such nonformulary drug product or nonpreferred drug product for up to a ten-day supply for each prescription but not more than once per year in order to allow time for the pharmacist or patient to contact the physician for approval of an alternate drug product that is on the formulary or preferred drug list or to obtain prior approval from the health benefit plan provider or its pharmacy benefits manager for the prescribed drug product; provided, however, that the health benefit plan provider shall not impose any penalty against the pharmacist or the patient, including, but not limited to, a higher copayment on the nonformulary drug product or nonpreferred drug product, for complying with the requirements of this subsection.

(c) Nothing in this Code section shall be construed to require any health benefit plan to include coverage for prescription drugs. Moreover, nothing in this Code section shall be construed to permit switching or substitution of a drug prescribed by a physician in any circumstance except as provided for in this Code section.

(d) The Commissioner is authorized to enforce this Code section and shall be authorized to impose on a health benefit plan provider a monetary penalty of \$500.00 for a violation of this Code section. If a monetary penalty is imposed by the Commissioner on a health benefit plan provider pursuant to this subsection, the health benefit plan provider may invoke the right to an administrative hearing in accordance with Chapter 2 of Title 33. Further, the Commissioner may exercise the powers granted by Code Section 33-2-24 and any other provision of this title.

(e) Nothing in this Code section shall be construed to create or imply a private cause of action for a violation of this Code section."

## **SECTION 2A.**

Article 5 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to prescription drugs, is amended by adding to the end of subsection (g) of Code Section 26-4-81, relating to substitution, a sentence to read as follows: "A practitioner of the healing arts licensed in this state to prescribe drugs may specify a generic manufacturer by indicating such designation on the prescription. An indication by a practitioner of the healing arts described in this subsection shall apply to all refills of such prescription."

## **SECTION 2B.**

Article 5 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to prescription drugs, is amended by inserting a new Code section to read as follows:

1 "26-4-81.1.

2 A pharmacist shall not engage in substitution of any drug prescribed to inhibit or prevent  
3 immune system activity as part of immunosuppressive therapy for a patient who has  
4 received an organ or tissue transplant that might increase the probability of the rejection  
5 of such transplant or of any drug or formulation thereof prescribed for the treatment of  
6 epilepsy or used to treat or prevent seizures without the consent of the prescribing  
7 physician. If the pharmacist, after reasonable attempts, is unable to contact the prescribing  
8 physician as required under this Code section, the pharmacist may substitute a generically  
9 equivalent immunosuppressive drug or a generically equivalent drug used expressly for  
10 control of epileptic seizures for a period of no more than 72 hours. When permitted by this  
11 Code section, a pharmacist may substitute a generic version by one manufacturer for a  
12 generic version by another manufacturer if both versions are AB rated by the federal Food  
13 and Drug Administration. This Code section shall not apply to a pharmacist who is a  
14 member of the staff of and dispenses drugs from the pharmacy of a hospital issued a permit  
15 as an institution under Code Section 31-7-1."

16 **SECTION 2.**

17 All laws and parts of laws in conflict with this Act are repealed.